FOR FURTHER INFORMATION CONTACT: For further information you may contact Ms. Callie Roach, telephone 202–597–1312, *Callie.Roach@dot.gov;* Mr. Daniel Koblenz, telephone 202–366–5329, *Daniel.Koblenz@dot.gov;* Office of the Chief Counsel. The mailing address of these officials is: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: This document makes a correction to final regulatory text that was published in the **Federal Register** on March 9, 2022 (87 FR 13209).

List of Subjects in 49 CFR Part 586

Labeling, Motor vehicle safety, Replica motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, NHTSA corrects 49 CFR part 586 as follows:

PART 586—REPLICA MOTOR VEHICLES

■ 1. The authority citation for part 586 continues to read as follows:

Authority: 49 U.S.C. 30112 and 30114; delegation of authority at 49 CFR 1.95.

§ 586.11 [Amended]

■ 2. In § 586.11, redesignate paragraph (b)(3) as paragraph (c).

Issued under authority delegated in 49 CFR part 1.95 and 49 CFR 501.8.

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2022–08289 Filed 4–18–22; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 220413–0096]

RIN 0648–BK97

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Russian River Estuary Management Activities

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; notification of issuance of Letter of Authorization.

SUMMARY: NMFS, upon request from the Sonoma County Water Agency (SCWA), hereby issues regulations to govern the unintentional taking of marine mammals incidental to Russian River estuary management activities in Sonoma County, California, over the course of five years (2022–2027). These regulations, which allow for the issuance of Letters of Authorization (LOA) for the incidental take of marine mammals during the described activities and specified timeframes, prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, as well as requirements pertaining to the monitoring and reporting of such taking.

DATES: Effective from April 21, 2022, through April 20, 2027.

ADDRESSES: A copy of SCWA's application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.fisheries.noaa.gov/action/sonoma-county-water-agencys-estuary-management-activities-sonoma-county-california-2022.* In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Regulatory Action

We received an application from SCWA requesting 5-year regulations and authorization to take multiple species of marine mammals. This rule establishes a framework under the authority of the MMPA (16 U.S.C. 1361 *et seq.*) to allow for the authorization of take by Level B harassment of marine mammals incidental to SCWA's estuary management activities at the mouth of the Russian River in Sonoma County, CA. Please see ''Background'' below for definitions of harassment.

Legal Authority for the Proposed Action

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region for up to five years if, after notice and public comment, the agency makes certain findings and issues regulations that set forth permissible methods of taking pursuant to that activity and other means of effecting the ''least practicable adverse impact'' on the affected species or stocks and their habitat (see the discussion below in the Mitigation section), as well as monitoring and reporting requirements. Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for issuing this rule containing five-year regulations, and for any subsequent LOAs. As directed by this legal authority, this rule contains mitigation, monitoring, and reporting requirements.

Summary of Major Provisions Within the Regulations

Following is a summary of the major provisions of this rule regarding SCWA's estuary management activities. These measures include:

- Measures to minimize the number and intensity of incidental takes during sensitive times of year and to minimize the duration of disturbances.
- Measures designed to eliminate startling reactions.
- Eliminating or altering management activities on the beach when pups are present, and by setting limits on the frequency and duration of events during pupping season.

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions

of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On September 2, 2021, we received an adequate and complete request from SCWA for authorization to take marine mammals incidental to estuary management activities. SCWA provided a final version of the application incorporating minor corrections on September 22, 2021. On September 29, 2021 (86 FR 53950), we published a notice of receipt of SCWA's application in the **Federal Register**, requesting comments and information related to the request for 30 days. We received one supportive comment from a private citizen. We published a notice of proposed rulemaking in the **Federal Register** on January 21, 2022 (87 FR 3262) and requested comments and information from the public. Please see Comments and Responses, below.

SCWA manages the naturally-formed barrier beach at the mouth of the Russian River in order to minimize potential for flooding adjacent to the estuary and to enhance habitat for juvenile salmonids, as well as to conduct biological and physical monitoring of the barrier beach and estuary. Flood control-related breaching of the barrier beach at the mouth of the river may include artificial breaches, as well as construction and maintenance of a lagoon outlet channel. The latter activity, an alternative management technique conducted to mitigate impacts of flood control on rearing habitat for Endangered Species Act (ESA)-listed salmonids, occurs only from May 15 through October 15 (hereafter, the ''lagoon management period''). Artificial breaching and monitoring activities may occur at any time during the period of validity of the regulations. The regulations are valid for 5 years, from April 21, 2022, through April 20, 2027.

Breaching of the naturally-formed barrier beach at the mouth of the Russian River requires the use of heavy equipment (*e.g.,* bulldozer, excavator) and increased human presence, and monitoring in the estuary requires the use of small boats. As a result, pinnipeds hauled out on the beach or at peripheral haul-outs in the estuary may exhibit behavioral responses that indicate incidental take by Level B harassment under the MMPA. Species known from the haul-out at the mouth of the Russian River or from peripheral haul-outs, and therefore anticipated to be taken incidental to the specified activity, include the harbor seal (*Phoca vitulina*), California sea lion (*Zalophus californianus*), and northern elephant seal (*Mirounga angustirostris*).

These regulations are the second consecutive five-year incidental take regulations issued in response to a petition from SCWA, following the previous ITR (2017–2022) (82 FR 13765; March 15, 2017). Prior to issuance of that initial ITR, NMFS issued seven consecutive incidental harassment authorizations (IHA) to SCWA for incidental take associated with the same ongoing activities, between 2010–2016.

Description of the Specified Activity

Overview

The action involves management of the estuary to prevent flooding while preventing adverse modification to critical habitat for ESA-listed salmonids. During the lagoon management period, this involves construction and maintenance of a lagoon outlet channel that would facilitate formation of a perched lagoon. A perched lagoon, which is an estuary closed to tidal influence in which water surface elevation is above mean high tide, would reduce flooding while maintaining beneficial conditions for juvenile salmonids. Additional breaches of the barrier beach may be conducted for the sole purpose of reducing flood risk. Additional detail was provided in the notice of proposed rulemaking (87 FR 3262; January 21, 2022), as well as in Table 2 of this notice. There have been no changes to the specified activity, and full discussion is not repeated here.

Dates and Duration

The specified activity may occur at any time during the five-year period of validity for these regulations (2022–2027), although construction and maintenance of a lagoon outlet channel will occur only during the lagoon management period. In addition, there are certain restrictions placed on SCWA during the harbor seal pupping season. These, as well as periodicity and frequency of the specified activities, are described in further detail in the notice of proposed rulemaking.

Specified Geographical Region

The estuary is located about 97 kilometers (km) (60 miles (mi)) northwest of San Francisco in Sonoma County, near Jenner, California (see Figure 1 of SCWA's application). The Russian River watershed encompasses 3,847 km^2 (1,485 mi^2) in Sonoma, Mendocino, and Lake Counties. The mouth of the Russian River is located at Goat Rock State Beach (see Figure 2 of SCWA's application); the estuary extends from the mouth upstream approximately 10 to 11 km (6–7 mi) between Austin Creek and the community of Duncans Mills (Heckel and McIver, 1994).

Comments and Responses

We published a notice of proposed rulemaking in the **Federal Register** on January 21, 2022 (87 FR 3262) and requested comments and information from the public. During the 30-day comment period, we received comments from 4 private citizens. Of these, one comment expressed general opposition and two expressed general support. The remaining comments and our responses are provided here, and the comments are available online at: *www.regulations.gov.*

Comment: The commenter expresses general opposition on the basis that the intended beneficial effects of the lagoon management activities on salmonid populations are uncertain, whereas the deleterious impacts of the activities on the affected marine mammals are guaranteed. The commenter goes on to describe the importance of marine mammals to the ecosystem as a whole and asserts that the specified activity would permanently alter the ecosystem, recommending that alternative options to the specified activity be considered. The commenter also poses several questions related to the specified activity, *e.g.,* whether there are preferable alternatives to benefit salmonids. These questions are not relevant to NMFS' action under the MMPA and are outside the scope of NMFS' authority here.

Response: As described in the notice of proposed rulemaking, SCWA is required to conduct lagoon management activities as a result of a 2008 Endangered Species Act Biological Opinion for Water Supply, Flood Control Operations, and Channel Maintenance in the Russian River watershed. In addition, SCWA conducts flood control activities outside the lagoon management period. Regardless, the MMPA mandates that incidental take of small numbers of marine mammals be authorized when, among other things, a finding is made that the effects of the taking represent no greater than a negligible impact on the affected marine mammal species or stocks. NMFS has made the necessary findings and, accordingly, issued the regulations and associated take authorization requested by SCWA. In addition, NMFS has appropriately considered the effects of the specified activity on marine mammal habitat. It is outside the scope of NMFS' responsibility under the MMPA to consider unspecified

alternatives to SCWA's specified activity.

Comment: The commenter questions the adequacy of SCWA's monitoring plan, with specific reference to SCWA's ability to detect changing occurrence patterns or issues related to impacts to pups, and to SCWA's ability to monitor for species for which take is not authorized.

Response: SCWA has successfully implemented a robust monitoring program at the barrier beach, within the estuary, and at peripheral areas for over 10 years, as described in annual monitoring reports available online. The current plan was determined sufficient by NMFS and described in detail in the notice of proposed rulemaking, and was provided for public review online. The commenter offers neither analysis to support concerns regarding the plan's efficacy nor specific recommendations.

Comment: The commenter states that ''. . . *sonomawater.org* considers [fur seals] to be abundant near the Russian River Estuary,'' asking what the affects to this species would be. The commenter does not provide a more specific reference for this alleged statement.

Response: Available scientific evidence does not support the idea that fur seals are ''abundant'' near the estuary, and no species of fur seal is expected to be impacted by the specified activity.

Description of Marine Mammals in the Area of the Specified Activity

Harbor seals are the most common species inhabiting the haul-out at the mouth of the Russian River (Jenner haul-out) and fine-scale local abundance data for harbor seals have been recorded extensively since 1972. California sea lions and northern elephant seals have also been observed infrequently in the project area. In addition to the primary Jenner haul-out, there are eight peripheral haul-outs nearby (see Figure 1 of SCWA's application). These include North Jenner and Odin Cove to the north; Pocked Rock, Kabemali, and Rock Point to the south; and Penny Logs, Patty's Rock, and Chalanchawi upstream within the estuary. Additional detail regarding the affected species was provided in the notice of proposed rulemaking (87 FR 3262; January 21, 2022). No new information is available, and full discussion is not repeated here.

Potential Effects of the Specified Activity on Marine Mammals and Their Habitat

This section in the notice of proposed rulemaking (87 FR 3262; January 21, 2022) included a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat, which is not repeated here. Please refer to that document for additional information. The Estimated Take section later in this document will include a quantitative analysis of the number of incidents of take expected to occur incidental to this activity. The Negligible Impact Analysis and Determination section will include an analysis of how this specific activity will impact marine mammals and will consider the content of this section, the Estimated Take section, and the Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and from that on the affected marine mammal populations or stocks.

Estimated Take

This section provides an estimate of the number of incidental takes authorized under the rule, which will inform both NMFS' consideration of whether the number of takes is ''small'' and the negligible impact determination.

Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

SCWA has requested, and NMFS has authorized, take of harbor seals, California sea lions, and northern elephant seals, by Level B harassment only, incidental to estuary management activities. These activities, involving increased human presence and the use of heavy equipment and support vehicles, are expected to harass pinnipeds present at the haul-out through disturbance only. In addition, monitoring activities prescribed in the BiOp may harass additional animals at the Jenner haul-out and at the three haul-outs located in the estuary (Penny Logs, Patty's Rock, and Chalanchawi). Estimates of the number of harbor seals that may be harassed by the management activities are based upon the number of potential take events associated with lagoon outlet channel and artificial breaching activities (Table 2) and the average number of harbor seals that are present at the Jenner haul-out during bar-closed conditions (Table 1). Table 2 details the total number of estimated takes for harbor seals.

Events associated with lagoon outlet channel management would occur only during the lagoon management period and are split into two categories: (1) Initial channel implementation, which would likely occur between May and September; and (2) maintenance and monitoring of the outlet channel, which would continue until October 15. In addition, it is possible that the initial outlet channel could close through natural processes, requiring additional channel implementation events. Based on past experience, SCWA estimates that a maximum of three outlet channel implementation events could be required, with each event lasting up to two days. Outlet channel implementation events would only occur when the bar is closed. Therefore, it is appropriate to use data from bar-closed monitoring events in estimating take (Table 1). Construction of the outlet channel is designed to produce a perched outflow, resulting in conditions that more closely resemble bar-closed than bar-open with regard to pinniped haul-out usage. As such, bar-closed data is appropriate for estimating take during all lagoon management period maintenance and monitoring activity. As dates of outlet channel implementation cannot be known in advance, the highest daily average of seals per month during the lagoon management period—the May average for 2010–20—is used in estimating take. For maintenance and monitoring activities associated with the lagoon outlet channel, which would occur on a weekly basis following implementation of the outlet channel, the average number of harbor seals for each month during bar-closed conditions was used.

Artificial breaching activities would also occur during bar-closed conditions, and the average number of harbor seals for each month during bar-closed conditions was used (Table 1). The number of estimated artificial breaching events is informed by experience. For those months with more frequent historical bar closure events, we assume that two such events could occur in any given year. For other months, we assume that only one such event would occur in a given year. The average total number of events from 2000–2020 is 5 per year, meaning that the estimated take numbers for artificial breaching are conservative. Please see Table 1 in SCWA's application for more information.

For monthly topographic surveys on the barrier beach, potential incidental take of harbor seals is typically

calculated as one hundred percent of the seals expected to be encountered. The exception is during the month of April, when surveyors would avoid seals to reduce harassment of pups and/or mothers with neonates. For the monthly topographic survey during April, surveyors would not approach or retreat slowly away from the haul-out when neonates are present, typically resulting in no disturbance. For that survey, the assumption is therefore that only ten percent of seals present would be harassed. The number of seals expected to be encountered is based on the overall average monthly number of seals hauled out as recorded during baseline surveys conducted by SCWA in 2010–20 (Table 1).

TABLE 1—AVERAGE NUMBER OF HARBOR SEALS OBSERVED BY MONTH AND RIVER MOUTH CONDITION, 2010–2020

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Closed	57	88	133	99	118	113	105	44	24	25	26	54
Open	121	148	138	165	151	197	260	107	56	59	88	90
Overall	106	143	138	159	149	178	227	100	49	38	62	79

For biological and physical habitat monitoring activities in the estuary, it was assumed that pinnipeds may be encountered once per event and flush from a river haul-out. The potential for harassment associated with these events is limited to the peripheral haul-outs located in the estuary. In past experience, SCWA typically sees no more than a single harbor seal at these haul-outs, which consist of scattered logs and rocks that often submerge at high tide.

As described previously, California sea lions and northern elephant seals are occasional visitors to the estuary. Based on limited information regarding occurrence of these species at the mouth of the Russian River estuary, we assume there is the potential to encounter one animal of each species per month throughout the year. Lagoon outlet channel activities could potentially occur over six months of the year, artificial breaching activities over eight months, topographic surveys year-round, and biological and physical monitoring in the estuary over eight months. Therefore, we assume that up to 34 incidents of take could occur per year for both the California sea lion and northern elephant seal. Based on past occurrence records, the take authorization for these two species is likely a precautionary overestimate.

TABLE 2—ESTIMATED NUMBER OF HARBOR SEAL TAKES RESULTING FROM RUSSIAN RIVER ESTUARY MANAGEMENT ACTIVITIES

Number of animals expected to occur[a]	Number of events[b c d]	Potential total number of individual animals that may be taken
Lagoon Outlet Channel Management (May 15 to October 15)		
Implementation: 118[e]	Implementation: 3	Implementation: 708.
Maintenance and Monitoring: May: 118 June: 113 July: 105	Maintenance: May: 1 June–Sept: 4/month Oct: 1	Maintenance: 1,287.
Aug: 44 Sept: 24 Oct: 25	Monitoring: June–Sept: 2/month Oct: 1	Monitoring: 597.
		Total: 2,592.
Artificial Breaching		
Oct: 25	Oct: 2	Oct: 50.
Nov: 26	Nov: 2	Nov: 52.
Dec: 54	Dec: 1	Dec: 54.
Jan: 57	Jan: 1	Jan: 57.
Feb: 88	Feb: 1	Feb: 88.
Mar: 133	Mar: 1	Mar: 133.
Apr: 99	Apr: 1	Apr: 99.
May: 118	May: 1	May: 118.
	10 events maximum	Total: 651.
Topographic Beach Surveys		
Jan: 106		Jan: 106.
Feb: 143		Feb: 143.
Mar: 138		Mar: 138.
Apr: 159		Apr: 16[g].
May: 149		May: 298.

TABLE 2—ESTIMATED NUMBER OF HARBOR SEAL TAKES RESULTING FROM RUSSIAN RIVER ESTUARY MANAGEMENT ACTIVITIES—Continued

Number of animals expected to occur[a]	Number of events[b c d]	Potential total number of individual animals that may be taken
	1 survey/month	
Jun: 178		Jun: 356.
Jul: 227		Jul: 454.
Aug: 100		Aug: 200.
Sep: 49		Sep: 98.
Oct: 38		Oct: 76.
Nov: 62		Nov: 124.
Dec: 79		Dec: 158.
		Total: 2,167.
Biological and Physical Habitat Monitoring in the Estuary		
1[f]	107	107.
Total		5,517.

[a] For lagoon outlet channel management and artificial breaching events, average daily number of animals corresponds with data from bar-closed conditions. For topographic beach surveys, average daily number of animals corresponds with overall monthly average data, as river mouth condition cannot be predicted. See Table 1.

[b] For implementation of the lagoon outlet channel, an event is defined as a single, two-day episode. For the remaining activities, an event is defined as a single day on which an activity occurs. Some events may include multiple activities.

[c] Number of events for artificial breaching assumed based on historical data. See Table 1 of SCWA's application.

[d] See Table 3 of SCWA's application for total number of estuary monitoring events; note that multiple activities may occur during a single event.

[e] Although implementation could occur at any time during the lagoon management period, the highest daily average per month from the lagoon management period was used.

[f] Based on past experience, SCWA expects that no more than one seal may be present, and thus have the potential to be disturbed, at river haul-outs.

[g] Ten percent of animals present during April surveys are assumed to be taken as a result of enhanced mitigation during period when neonates are most likely to be present.

The take numbers described in the preceding text are annual estimates. Therefore, over the course of the 5-year period of validity of the regulations, we have authorized through Letter of Authorization a total of 27,585 incidents of take for harbor seals and 170 such incidents each for the California sea lion and northern elephant seal.

Mitigation

Under Section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (''least practicable adverse impact''). NMFS does not have a regulatory definition for ''least practicable adverse impact.'' However, NMFS' implementing regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, implementation of the measure(s) is expected to reduce impacts to marine mammal species or stocks, their habitat, and their availability for subsistence uses. This analysis will consider such things as the nature of the potential adverse impact (such as likelihood, scope, and range), the likelihood that the measure will be effective if implemented, and the likelihood of successful implementation.

(2) The practicability of the measure for applicant implementation. Practicability of implementation may consider such things as cost, impact on operations, personnel safety, and practicality of implementation.

SCWA will continue the following mitigation measures, as implemented during the previous ITAs, designed to minimize impact to affected species and stocks:

- SCWA crews would cautiously approach (*e.g.,* slowly and with minimal sound) the haul-out ahead of heavy equipment to minimize the potential for sudden flushes, which may result in a stampede.
- SCWA staff would avoid walking or driving equipment through the seal haul-out.
- Crews on foot would make an effort to be seen by seals from a distance, if possible, rather than appearing suddenly, again preventing sudden flushes.
- Equipment would be driven slowly on the beach and care would be taken to minimize the number of shut-downs and start-ups when the equipment is on the beach to reduce disturbance of seals from loud noises following a relatively quiet period.

In addition, SCWA will continue mitigation measures specific to pupping season (March 15–June 30), as implemented in the previous ITAs:

- SCWA will maintain a one week no-work period between water level management events (unless flooding is an immediate threat) to allow for an adequate disturbance recovery period. During the no-work period, equipment must be removed from the beach.
- A water level management event may not occur for more than two consecutive days unless flooding threats cannot be controlled.

• If a pup less than one week old is on the beach where heavy machinery would be used or on the path used to access the work location, the management action will be delayed until the pup has left the site or the latest day possible to prevent flooding while still maintaining suitable fish rearing habitat. In the event that a pup remains present on the beach in the presence of flood risk, SCWA would consult with NMFS to determine the appropriate course of action. SCWA will coordinate with the locally established seal monitoring program (Stewards' Seal Watch) to determine if pups less than one week old are on the beach prior to a breaching event.

• Physical and biological monitoring will not be conducted if a pup less than one week old is present at the monitoring site or on a path to the site.

For all activities, personnel on the beach would include equipment operators and safety team members. Occasionally, there would be additional people (SCWA staff or regulatory agency staff) on the beach to observe the activities. SCWA staff would be followed by the equipment, which would then be followed by an SCWA vehicle (typically a small pickup truck, the vehicle would be parked at the previously posted signs and barriers on the south side of the excavation location). Equipment would be driven slowly on the beach and care would be taken to minimize the number of shut-downs and start-ups when the equipment is on the beach. All work would be completed as efficiently as possible, with the smallest amount of heavy equipment possible, to minimize disturbance of seals at the haul-out. Boats operating near river haul-outs during monitoring would be kept within posted speed limits and driven as far from the haul-outs as safely possible to minimize flushing seals.

We have carefully evaluated SCWA's planned mitigation measures and considered a range of other measures in the context of ensuring that we prescribed the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Based on our evaluation of these measures, we have determined that the mitigation measures provide the means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses.

Monitoring and Reporting

In order to issue an LOA for an activity, Section 101(a)(5)(A) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of the authorized taking. NMFS's MMPA implementing regulations further describe the information that an applicant should provide when requesting an authorization (50 CFR 216.104(a)(13)), including the means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and the level of taking or impacts on populations of marine mammals.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

• Occurrence of significant interactions with marine mammal species in action area (*e.g.,* animals that came close to the vessel, contacted the gear, or are otherwise rare or displaying unusual behavior).

• Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).

• Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.

• How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.

• Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or important physical components of marine mammal habitat).

• Mitigation and monitoring effectiveness.

SCWA submitted a marine mammal monitoring plan as part of the ITA application. It can be found online at *www.fisheries.noaa.gov/action/sonoma-county-water-agencys-estuary-management-activities-sonoma-county-california-2022.* The plan has been successfully implemented (in slightly different form from the current plan) by SCWA under previous ITAs. The purpose of this monitoring plan, which is carried out collaboratively with the Stewards of the Coasts and Redwoods (Stewards) organization, is to detect the response of pinnipeds to estuary management activities at the Russian River estuary. SCWA will continue to collect data on annual abundance of harbor seals at the Jenner haul-out to monitor trends in population size and annual pup production. Observations of seal behavior will be recorded and reported to monitor any impacts resulting from estuary management and monitoring activities.

Proposed Monitoring Measures

Baseline Monitoring—Baseline data on conditions associated with seal presence at the Jenner haul-out would be collected each year from March 15 through October 15. Generally, monitoring associated with implementation and maintenance of the lagoon outlet channel would occur between May 15 and October 15. Monitoring of artificial breaching activities would occur with each event, generally outside the lagoon management period. Should the mouth remain open during the lagoon management period, monitoring of the Jenner haul-out would continue as described below.

Baseline monitoring will occur at the Jenner overlook from March 15 to October 15. This schedule would capture the pupping and molting seasons, and extend to the end of the beach management period, when management activities are more likely to occur. Surveys would be conducted twice monthly, except for the pupping season (April–May) when surveys would be conducted weekly in order to record the presence of neonate harbor seals. The haul-out will be monitored for 4 hours, scheduled for any consecutive block between the hours of 0800 and 1600. An effort will be made to avoid periods of high tide when scheduling baseline surveys.

All seals hauled out on the beach will be counted every 30 minutes from the overlook on the bluff along Highway 1 adjacent to the haul-out using a high powered spotting scope. Monitoring may conclude for the day if weather conditions affect visibility (*e.g.,* heavy fog in the afternoon). Depending on how the sandbar is formed, seals may haul out in multiple groups at the mouth. At each thirty minute count, the observer indicates where groups of seals are hauled out on the sandbar and provides a total count for each group. When possible, adults and pups will be counted separately. The observer will

provide a sketch of where the seals are hauled out on the back of the data sheet.

In addition to the count data, disturbances of the haul-out will be recorded. The methods for recording disturbances would follow a three-point scale adopted by NMFS that represents an increasing seal response to the disturbance (Table 3). For each disturbance event the disturbance source and seal response will be recorded and tallied. Disturbance events corresponding with Levels 2–3 are considered to be harassment. Weather conditions will also be recorded at the beginning of each survey.

TABLE 3—SEAL RESPONSE TO DISTURBANCE

Level	Type of response	Definition
1	Alert	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length.
2	Movement	Movements in response to the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees.
3	Flight	All retreats (flushes) to the water.

Estuary Management Event Monitoring, Lagoon Outlet Channel—Should the mouth close during the lagoon management period, SCWA would construct a lagoon outlet channel as required by the BiOp. Activities associated with the initial construction of the outlet channel, as well as the maintenance of the channel that may be required, would be monitored for disturbances to the seals at the Jenner haul-out.

A 1-day pre-outlet channel survey would be made within 1 to 3 days prior to constructing the outlet channel. The haul-out would be monitored on the day the outlet channel is constructed and daily for up to 2 days during channel excavation activities. Monitoring would also occur on each day that the outlet channel is maintained using heavy equipment for the duration of the lagoon management period.

Monitoring of outlet channel maintenance would correspond with the monitoring described under the ''Baseline Monitoring'' section above. Methods would follow the count and disturbance monitoring protocols described in the ''Baseline Monitoring'' section.

Estuary Management Event Monitoring, Artificial Breaching Events—In accordance with the BiOp, SCWA may artificially breach the barrier beach outside of the summer lagoon management period, and may conduct a maximum of two such breachings during the lagoon management period, when estuary water surface elevations rise above seven feet. In that case, NMFS may be consulted regarding potential scheduling of an artificial breaching event to open the barrier beach and reduce flooding risk.

Pinniped response to artificial breaching will be monitored at each such event during the period of validity of these proposed regulations. Methods would follow the census and disturbance monitoring protocols described in the ''Baseline Monitoring'' section, which were also used for the 1996 to 2000 monitoring events and since 2009. The exception, as for lagoon management events, is that duration of monitoring is dependent upon duration of the event. On the day of the management event, pinniped monitoring begins at least one hour prior to the crew and equipment accessing the beach work area and continues through the duration of the event, until at least one hour after the crew and equipment leave the beach.

For all counts, the following information would be recorded in 30-minute intervals: (1) Pinniped counts, by species; (2) behavior; (3) time, source and duration of any disturbance; (4) estimated distances between source of disturbance and pinnipeds; (5) weather conditions (*e.g.,* temperature, wind); and (5) tide levels and estuary water surface elevation.

Monitoring During Pupping Season—The pupping season is defined as March 15 to June 30. Baseline, lagoon outlet channel, and artificial breaching monitoring during the pupping season will include records of neonate (pups less than one week old) observations. Characteristics of a neonate pup include: Body weight less than 15 kg; thin for their body length; an umbilicus or natal pelage present; wrinkled skin; and awkward or jerky movements on land. SCWA will coordinate with the Seal Watch monitoring program to determine if pups less than one week old are on the beach prior to a water level management event.

If, during monitoring, observers sight any pup that might be abandoned, SCWA would contact the NMFS stranding response network immediately and also report the incident to NMFS' West Coast Regional Office and Office of Protected Resources within 48 hours. Observers will not approach or move the pup. Potential indications that a pup may be abandoned are no observed contact with adult seals, no movement of the pup, and the pup's attempts to nurse are rebuffed.

Staffing—Monitoring would be conducted by qualified individuals. Generally, these individuals would include professional biologists employed by SCWA or volunteers trained by the Stewards and SCWA. All volunteer monitors would be required to attend a classroom-style training and on site mentoring by an experienced observer. Training would cover the MMPA and conditions of the LOA, SCWA's Pinniped Monitoring Program, pinniped species identification, age class identification (including a specific discussion regarding neonates), recording of count and disturbance observations (including completion of datasheets), and use of equipment. Pinniped identification would include harbor seal, California sea lion, and northern elephant seal, as well as other pinniped species with potential to occur in the area (*i.e.,* northern fur seals, Guadalupe fur seals, Steller sea lions).

Generally, volunteers would collect baseline data on Jenner haul-out use during the bi-weekly monitoring events. A schedule for this monitoring would be established with Stewards once volunteers are available for the monitoring effort. SCWA staff would monitor lagoon outlet channel excavation, maintenance activities, artificial breaching events, and biological or physical monitoring activities at the Jenner haul-out.

Reporting

SCWA is required to submit an annual report on all activities and

marine mammal monitoring results to NMFS within 90 days following the end of the monitoring period. These reports would contain the following information:

- The number of pinnipeds taken, by species and age class (if possible);
- Behavior prior to and during water level management events;
- Start and end time of activity;
- Estimated distances between source and pinnipeds when disturbance occurs;
- Weather conditions (*e.g.,* temperature, wind, etc.);
- Haul-out reoccupation time of any pinnipeds based on post-activity monitoring;
- Tide levels and estuary water surface elevation; and
- Pinniped census from bi-monthly and nearby haul-out monitoring.

The annual report includes descriptions of monitoring methodology, tabulation of estuary management events, summary of monitoring results, and discussion of problems noted and proposed remedial measures.

Summary of Previous Monitoring

SCWA complied with the mitigation and monitoring required under previous authorizations. Previous monitoring reports are available online at *www.fisheries.noaa.gov/action/incidental-take-authorization-sonoma-county-water-agencys-estuary-management-activities.*

While the observed take in all years was significantly lower than the level authorized, it is possible that incidental take in future years could approach the level authorized. Actual take is dependent largely upon the number of water level management events that occur, which is unpredictable. Take of species other than harbor seals depends upon whether those species, which do not consistently utilize the Jenner haul-out, are present. The authorized take, though much higher than the actual take, is justified based on conservative estimated scenarios for animal presence and necessity of water level management. No significant departure from the method of estimation is used for these proposed regulations (see Estimated Take) for the same activities in 2022–27.

Since 2009 SCWA has been conducting baseline monitoring of the Jenner haul-out and several nearby coastal and estuary sites (as described in the 2016 Monitoring Plan, available online at *www.fisheries.noaa.gov/action/incidental-take-authorization-sonoma-county-water-agencys-estuary-management-activities*). The purpose of baseline monitoring was to describe the conditions under which harbor seals haul out and how seals respond to implementation of the estuary management program. Monitoring data illustrate a strong seasonal pattern in most years where seals are most abundant during the spring and summer months (see Figure 2 of SCWA's 2021 Monitoring Plan). Seasonal variation in the abundance of harbor seals is commonly observed throughout their range. Seal abundance at the Jenner haul-out was shown to increase throughout the day, but only during the spring and winter months (see Figure 3 of SCWA's 2021 Monitoring Plan). Seal abundance was weakly affected by tide height with higher tides shown to reduce seal abundance (see Figure 4 of SCWA's 2021 Monitoring Plan), based on direct observations, this is likely due to waves washing over the haul-out during these high tides. Seal abundance was also greater when the river mouth was open to the ocean (see Figure 5 of SCWA's 2021 Monitoring Plan).

In addition to baseline monitoring, monitoring during water level management activities (breaching and lagoon outlet implementation) has been ongoing since 2009. Recent observations of seals during breaching activities indicate that seals leave the Jenner haul-out as safety crews approach their haul-out ahead of equipment. Depending on the location of their haul-out seals have also remained on the beach during breaching activities. The number of harbor seals hauled out at the mouth of the estuary declined when the barrier beach was closed and increased soon after it was breached. Seals that left the haul-out just prior to breaching have returned to the beach within hours of completion of activities and typically return prior to the next morning (see prior SCWA monitoring reports, available online at *www.fisheries.noaa.gov/action/incidental-take-authorization-sonoma-county-water-agencys-estuary-management-activities*).

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' by mortality, serious injury, and Level A or Level B harassment, we consider other factors, such as the likely nature of any behavioral responses (*e.g.,* intensity, duration), the context of any such responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality).

Although SCWA's estuary management activities may disturb pinnipeds hauled out at the mouth of the Russian River, as well as those hauled out at several locations in the estuary during recurring monitoring activities, impacts are occurring to a small, localized group of animals. While these impacts can occur year-round, they occur sporadically and for limited duration (*e.g.,* a maximum of two consecutive days for water level management events). Seals will likely become alert or, at most, flush into the water in reaction to the presence of crews and equipment on the beach. While disturbance may occur during a sensitive time (during the March 15–June 30 pupping season), mitigation measures have been specifically designed to further minimize harm during this period and eliminate the possibility of pup injury or mother-pup separation.

No injury, serious injury, or mortality is anticipated, nor is the action likely to result in long-term impacts such as permanent abandonment of the haul-out. Injury, serious injury, or mortality to pinnipeds would likely result from startling animals inhabiting the haul-out into a stampede reaction, or from extended mother-pup separation as a result of such a stampede. Long-term impacts to pinniped usage of the haul-out were previously considered to be a potential result of increased presence of humans and equipment on the beach. However, 10 years of monitoring has not shown any such impacts to seal usage of the beach. Nevertheless, SCWA will

continue to implement the previously described mitigation measures. These are designed to reduce the possibility of startling pinnipeds, by gradually apprising them of the presence of humans and equipment on the beach, and to reduce the possibility of impacts to pups by eliminating or altering management activities on the beach when pups are present and by setting limits on the frequency and duration of events during pupping season. During the past 20 years of flood control management, implementation of similar mitigation measures has resulted in no known stampede events and no known injury, serious injury, or mortality. Over the course of that time period, management events have generally been infrequent and of limited duration.

No pinniped stocks for which incidental take authorization is proposed are listed as threatened or endangered under the ESA or determined to be strategic or depleted under the MMPA. Existing data suggest that harbor seal populations have reached carrying capacity; populations of California sea lions and northern elephant seals in California are also considered healthy.

In summary, and based on extensive monitoring data, we believe that impacts to hauled-out pinnipeds during estuary management activities would be behavioral harassment of limited duration (*i.e.,* less than one day) and limited intensity (*i.e.,* temporary flushing at most). Stampeding, and therefore injury or mortality, is not expected—nor been documented—in the years since appropriate protocols were established (see Mitigation for more details). Further, the continued, and increasingly heavy (see figures in SCWA documents), use of the haul-out despite decades of breaching events indicates that abandonment of the haul-out is unlikely.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, we find that the total marine mammal take from SCWA's construction activities will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under section 101(a)(5)(A) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The annual amount of take NMFS proposes to authorize is below one-third of the estimated stock abundance for all species (see Table 2). However, this represents an overestimate of the number of individuals harassed annually over the duration of the proposed regulations, because these totals represent much smaller numbers of individuals that may be harassed multiple times. Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of marine mammals implicated by the specified activity. Therefore, we have determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Adaptive Management

The regulations governing the take of marine mammals incidental to SCWA estuary management activities contain an adaptive management component.

The reporting requirements associated with this rule are designed to provide NMFS with monitoring data from the previous year to allow consideration of whether any changes are appropriate. The use of adaptive management allows NMFS to consider new information from different sources to determine (with input from SCWA regarding practicability) on an annual or biennial basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggests that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures are practicable.

SCWA's monitoring program (see Monitoring and Reporting) will be managed adaptively. Changes to the monitoring program may be adopted if they are reasonably likely to better accomplish the MMPA monitoring goals described previously or may better answer the specific questions associated with SCWA's monitoring plan.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) Results from monitoring reports, as required by MMPA authorizations; (2) results from general marine mammal and sound research; and (3) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOAs.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must evaluate our proposed action (*i.e.,* the promulgation of regulations and subsequent issuance of incidental take authorization) and alternatives with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the action qualifies to be categorically excluded from further NEPA review.

Endangered Species Act (ESA)

No marine mammal species listed under the ESA are expected to be affected by these activities. Therefore, we have determined that section 7 consultation under the ESA is not required.

Classification

Pursuant to the procedures established to implement Executive Order 12866, the Office of Management and Budget has determined that this rule is not significant.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration at the proposed rule stage that this action will

not have a significant economic impact on a substantial number of small entities. SCWA is the sole entity that would be subject to the requirements in these regulations, and the Sonoma County Water Agency is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Under the RFA, governmental jurisdictions are considered to be small if they are ''. . . governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000 . . . .'' As of the 2020 census, Sonoma County, CA had a population of nearly 500,000 people. No comments were received regarding this certification or on the economic impacts of the rule more generally. As a result, a regulatory flexibility analysis is not required and none has been prepared.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number. These requirements have been approved by OMB under control number 0648–0151 and include applications for regulations, subsequent LOAs, and reports.

Waiver of Delay in Effective Date

NMFS has determined that there is good cause under the Administrative Procedure Act (5 U.S.C. 553(d)(3)) to waive the 30-day delay in the effective date of this final rule. No individual or entity other than the SCWA is affected by the provisions of these regulations. The SCWA has requested that this final rule take effect on April 21, 2022, to accommodate the SCWA's LOA expiring on April 20, 2022, so as to not cause a disruption in estuary management activities. The waiver of the 30-day delay of the effective date of the final rule will ensure that the MMPA final rule and LOA are in place by the time the previous authorization expires. Any delay in finalizing the rule would result in either: (1) A suspension of planned estuary management activities, which could result in flood control issues and/or SCWA's failure to comply with the mandatory lagoon management activities required under the 2008 BiOp; or (2) the SCWA's procedural non-compliance with the MMPA (should the SCWA conduct the specified activities without an LOA), thereby resulting in the potential for unauthorized takes of marine mammals. Moreover, the SCWA is ready to implement the regulations immediately and requested the waiver. For these reasons, NMFS finds good cause to waive the 30-day delay in the effective date. In addition, the rule authorizes incidental take of marine mammals that would otherwise be prohibited under the statute. Therefore, by granting an exception to the SCWA, the rule will relieve restrictions under the MMPA, which provides a separate basis for waiving the 30-day effective date for the rule.

List of Subjects in 50 CFR Part 217

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: April 14, 2022.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 217 is amended as follows:

PART 217—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. Revise subpart A to part 217 to read as follows:

Subpart A—Taking Marine Mammals Incidental to Russian River Estuary Management Activities

Sec.

§ 217.1 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the Sonoma County Water Agency (SCWA) and those persons it authorizes or funds to conduct activities on its behalf for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occurs incidental to estuary management activities.

(b) The taking of marine mammals by SCWA may be authorized in a Letter of Authorization (LOA) only if it occurs at Goat Rock State Beach or in the Russian River estuary in California.

§ 217.2 Effective dates.

Regulations in this subpart are effective from April 21, 2022, through April 20, 2027.

§ 217.3 Permissible methods of taking.

(a) Under LOAs issued pursuant to §§ 216.106 of this chapter and 217.7, the Holder of the LOA (hereinafter ''SCWA'') may incidentally, but not intentionally, take marine mammals within the area described in § 217.1(b) of this chapter by Level B harassment associated with estuary management activities, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

(b) [Reserved]

§ 217.4 Prohibitions.

Except for the takings contemplated in § 217.3 and authorized by an LOA issued under §§ 216.106 of this chapter and 217.7, it is unlawful for any person to do any of the following in connection with the activities described in § 217.1 of this chapter:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or an LOA issued under §§ 216.106 of this chapter and 217.7;

(b) Take any marine mammal not specified in such LOAs;

(c) Take any marine mammal specified in such LOAs in any manner other than as specified;

(d) Take a marine mammal specified in such LOAs if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(e) Take a marine mammal specified in such LOAs if NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses.

§ 217.5 Mitigation requirements.

When conducting the activities identified in § 217.1(a), the mitigation measures contained in any LOA issued under §§ 216.106 of this chapter and 217.7 must be implemented. These mitigation measures shall include but are not limited to:

(a) General conditions:

(1) A copy of any issued LOA must be in the possession of SCWA, its designees, and work crew personnel operating under the authority of the issued LOA.

(2) If SCWA observes a pup that may be abandoned, it shall contact the National Marine Fisheries Service (NMFS) West Coast Regional Stranding Coordinator immediately and also report the incident to NMFS Office of

Protected Resources within 48 hours. Observers shall not approach or move the pup.

(b) SCWA crews shall cautiously approach the haul-out ahead of heavy equipment.

(c) SCWA staff shall avoid walking or driving equipment through the seal haul-out.

(d) Crews on foot shall make an effort to be seen by seals from a distance.

(e) All work shall be completed as efficiently as possible and with the smallest amount of heavy equipment possible.

(f) Boats operating near river haul-outs during monitoring shall be kept within posted speed limits and driven as far from the haul-outs as safely possible.

(g) SCWA shall implement the following mitigation measures during pupping season (March 15–June 30):

(1) SCWA shall maintain a one week no-work period between water level management events (unless flooding is an immediate threat) to allow for an adequate disturbance recovery period. During the no-work period, equipment must be removed from the beach;

(2) A water level management event may not occur for more than two consecutive days unless flooding threats cannot be controlled.

(3) If a pup less than one week old is on the beach where heavy machinery will be used or on the path used to access the work location, the management action shall be delayed until the pup has left the site or the latest day possible to prevent flooding while still maintaining suitable fish rearing habitat. In the event that a pup remains present on the beach in the presence of flood risk, SCWA shall consult with NMFS and the California Department of Fish and Wildlife to determine the appropriate course of action. SCWA shall determine if pups less than one week old are on the beach prior to a breaching event.

(4) Physical and biological monitoring shall not be conducted if a pup less than one week old is present at the monitoring site or on a path to the site.

§ 217.6 Requirements for monitoring and reporting.

(a) Monitoring and reporting shall be conducted in accordance with the approved Pinniped Monitoring Plan.

(b) Reporting:

(1) Annual reporting:

(i) SCWA shall submit an annual summary report to NMFS not later than ninety days following the end of a given calendar year. SCWA shall provide a final report within thirty days following resolution of comments on the draft report.

(ii) These reports shall contain, at minimum, the following:

(A) The number of seals taken, by species and age class (if possible);

(B) Behavior prior to and during water level management events;

(C) Start and end time of activity;

(D) Estimated distances between source and seals when disturbance occurs;

(E) Weather conditions (*e.g.,* temperature, wind, etc.);

(F) Haul-out reoccupation time of any seals based on post-activity monitoring;

(G) Tide levels and estuary water surface elevation; and

(H) Seal census from haul-out monitoring.

(2) [Reserved]

(c) Reporting of injured or dead marine mammals:

(1) In the unanticipated event that the activity defined in § 217.1(a) clearly causes the take of a marine mammal in a prohibited manner, SCWA shall immediately cease such activity and report the incident to the Office of Protected Resources (OPR), NMFS and the West Coast Regional Stranding Coordinator, NMFS. Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with SCWA to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. SCWA may not resume their activities until notified by NMFS. The report must include the following information:

(i) Time and date of the incident;

(ii) Description of the incident;

(iii) Environmental conditions;

(iv) Description of all marine mammal observations in the 24 hours preceding the incident;

(v) Species identification or description of the animal(s) involved;

(vi) Fate of the animal(s); and

(vii) Photographs or video footage of the animal(s).

(2) In the event that SCWA discovers an injured or dead marine mammal and determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition), SCWA shall immediately report the incident to OPR and the West Coast Regional Stranding Coordinator, NMFS. The report must include the information identified in paragraph (c)(1) of this section. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with SCWA to determine whether additional mitigation measures or modifications to the activities are appropriate.

(3) In the event that SCWA discovers an injured or dead marine mammal and determines that the injury or death is not associated with or related to the activities defined in § 217.1(a) (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, scavenger damage), SCWA shall report the incident to OPR and the West Coast Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. SCWA shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS.

(4) Pursuant to paragraphs (c)(2–3) of this section, SCWA may use discretion in determining what injuries (*i.e.,* nature and severity) are appropriate for reporting. At minimum, SCWA must report those injuries considered to be serious (*i.e.,* will likely result in death) or that are likely caused by human interaction (*e.g.,* entanglement, gunshot). Also pursuant to sections paragraphs (c)(2–3) of this section, SCWA may use discretion in determining the appropriate vantage point for obtaining photographs of injured/dead marine mammals.

§ 217.7 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, SCWA must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, SCWA may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, SCWA must apply for and obtain a modification of the LOA as described in § 217.8.

(e) The LOA shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA shall be published in the **Federal Register** within 30 days of a determination.

§ 217.8 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §§ 216.106 of this chapter and 217.7 for the activity identified in § 217.1(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section), and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For an LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §§ 216.106 of this chapter and 217.7 for the activity identified in § 217.1(a) may be modified by NMFS under the following circumstances:

(1) Adaptive Management—NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with SCWA regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from SCWA's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) Emergencies—If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to §§ 216.106 of this chapter and 217.7, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within thirty days of the action.

§ 217.9 [Reserved]

§ 217.10 [Reserved]

[FR Doc. 2022–08346 Filed 4–18–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 220412–0093]

RIN 0648–BK40

List of Fisheries for 2022

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) publishes its final List of Fisheries (LOF) for 2022, as required by the Marine Mammal Protection Act (MMPA). The LOF for 2022 reflects new information on interactions between commercial fisheries and marine mammals. NMFS must classify each commercial fishery on the LOF into one of three categories under the MMPA based upon the level of mortality and serious injury of marine mammals that occurs incidental to each fishery. The classification of a fishery on the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan (TRP) requirements.

DATES: The effective date of this final rule is May 19, 2022.

ADDRESSES: Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

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SUPPLEMENTARY INFORMATION:

What is the List of Fisheries?

Section 118 of the MMPA requires NMFS to place all U.S. commercial fisheries into one of three categories based on the level of incidental mortality and serious injury of marine mammals occurring in each fishery (16 U.S.C. 1387(c)(1)). The classification of a fishery on the LOF determines whether participants in that fishery may be required to comply with certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements. NMFS must reexamine the LOF annually, considering new information in the Marine Mammal Stock Assessment Reports (SARs) and other relevant sources, and publish in the **Federal Register** any necessary changes to the LOF after notice and opportunity for public comment (16 U.S.C. 1387 (c)(1)(C)).

How does NMFS determine in which category a fishery is placed?

The definitions for the fishery classification criteria can be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2). The criteria are also summarized here.

Fishery Classification Criteria

The fishery classification criteria consist of a two-tiered, stock-specific approach that first addresses the total impact of all fisheries on each marine mammal stock and then addresses the impact of individual fisheries on each stock. This approach is based on consideration of the rate, in numbers of animals per year, of incidental mortalities and serious injuries of marine mammals due to commercial fishing operations relative to the potential biological removal (PBR) level for each marine mammal stock. The MMPA (16 U.S.C. 1362 (20)) defines the PBR level as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. This